

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 05-10145-NG
)	
MICHAEL FOWLER)	

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Michael Fowler, submits this memorandum to assist the Court in sentencing. As set forth in detail in the Presentence Report, the conduct in this matter is inextricably entwined with the conduct that was the subject Folwer's plea and sentencing in United States v. Michael Fowler, Criminal No. 04-10308-JLT, in which Judge Tauro sentenced Fowler to 120 months imprisonment. In so doing, Judge Tauro (1) adopted the joint objection of the parties to the Probation Department's suggestion that the offense involved 25 or more weapons, (2) determined that the correct Total Offense Level was 27, (3) determined the resulting guideline sentencing range was 120-150 months, (3) rejected the government's invitation to sentence at the high end of the guideline range, and (4) rejected defendant's suggestion that a variance to 100 months was warranted.

Although no plea agreement was filed in the instant matter,¹ the government has repeatedly and forthrightly represented to this and Judge Tauro's session that it would recommend an identical concurrent sentence in this session once Fowler was sentenced by Judge Tauro; indeed, the plea and sentencing hearing in this matter has been the subject of repeated joint requests in order to dispose of the Judge Tauro matter.

As the Presentence Report correctly points out, see PSR §182, the sentence imposed by this Court is subject to U.S.S.G. §5G1.3(b) because Fowler, having been sentenced by Judge Tauro, is now serving an undischarged term of imprisonment. Moreover, the Federal Bureau of Prisons will not award any jail credit to on the sentence imposed by this Court because any time spent in pretrial detention will be credited only to the sentence imposed by Judge Tauro. See 18 U.S.C. § 3585(b)(2) (mandating that jail credit for time spent in detention may only be credited against one sentence). Thus, Fowler appears before this Court with no jail credit on the instant matter but having completed nearly

¹Fowler until recently elected to proceed pro se in Judge Tauro's session as well as before this Court. He thus represented himself during the negotiations that ultimately disposed of the Judge Tauro's this case. Fowler and the government negotiated and filed a plea agreement in the Judge Tauro case with, as described below, an oral agreement concerning sentencing in this matter.

half of the sentence imposed by Judge Tauro.² Consequently, in order to execute the intent of the parties and satisfy §5G1.2 in light of Judge Tauro's 120 month sentence, this Court should adjust its sentence to account for the time already served and impose a sentence of sixty (60) months imprisonment concurrent with the sentence imposed by Judge Tauro. Such a sentence, assuming credit for good time, will result in Fowler serving 51 months from the date of sentencing and his release in July 2012 and thus his release from this sentence at roughly the same time as his release on the sentence imposed by Judge Tauro.

CONCLUSION

For the foregoing reasons, the Court should adopt the joint position of the parties that the Total Offense Level is 27 and the resulting guideline sentencing range is 120-150 months. This Court should impose a low-end guideline sentence, adjusted to sixty (60) months imprisonment to comply with U.S.S.G. §5G1.3(b), to run concurrent with the sentence imposed in Criminal No. 04-10308-JLT. A three-year period of supervised release should follow. The Court should impose no fine.

²Fowler was arrested on January 22, 2004 and has been detained ever since. Assuming good time, he will be released on the sentence imposed by Judge Tauro in July 2012.

MICHAEL FOWLER
By his attorney,

/s/ Timothy Watkins
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CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), as well as to the United States Probation Office by electronic mail, on April 11, 2008.

/s/ Timothy G. Watkins
Timothy G. Watkins